

## EVALUATING THE CRIMINAL LIABILITY OF THE BYSTANDER OF CYBER BULLYING IN NIGERIA\*

### Abstract

*Cyber bullying is simply bullying on the internet or through communication devices such as blogs, social networking sites and digital instant messaging. Cyber bullying has become a prominent issue concerning number of youths who have been traumatised, sometimes to the point of committing suicide, as a result of being a victim of cyber bullying. There is now a plethora of literature focusing on the relationship between bullies and victims in cyberspace. Government in Nigeria and throughout the world have also introduced legislations, initiatives, policies etc to tackle the problem of cyber bullying. However, the existing literatures, legislation and initiatives often fail to consider or evaluate the criminal liability or even the role of bystanders in encouraging and magnifying the bullying simply by their passive presence or as agents who can potentially curtail cyber bullying incidents before they go too far. Thus, emphasis needs to be shifted from the actual bully to the spectators, who views, likes, comments or even shares the derogatory posts and as such gathers more audience and escalates the severity of the harm done. In other climes, the law makers and the courts in the bid to preserve communal life have found criminally liable under 'Bad Samaritan laws', any person who seeing another in danger and without risk to his own life refuses to rescue or render reasonable help or at least report to proper authority, but this is not the position of the law in Nigeria. This paper therefore sheds light on the significant role that bystanders play in cyber bullying and whether a legal obligation should be placed or imposed on bystanders to be good Samaritans in cyberspace.*

**Keywords:** Cyber bullying, Bystander, Cyberspace, Crime.

### 1. Introduction

Technology is integrated into our lives and its benefits are immense and far reaching. However, wrongly embraced, technology can work against us. Technology revolutionizes communication using social media and it is difficult to imagine a world without it. Often times, discourses in digital communication are beyond policing and therefore opened to abuse when communicators are anonymous to each other. This encourages proliferation of crimes such as cyber frauds, scamming, pornography and dissemination of fake news etc. Cyberbullying,<sup>1</sup> one of the most pervasive of crimes in social media, has reared its head in recent times.<sup>2</sup> In the last decade, the media all over the world have covered the stories of teens who committed suicide or suffered severe harm following periods of online harassment. It is also pertinent to note that when in-school adolescents are bullied through the internet, face book or other social network media, they tend to have a depleted self-esteem considering the fact that other people in their social network would be aware of their experience(s).<sup>3</sup> Rebecca Sedwick, a 12-year-old girl, 'became one of the youngest member so far growing list of children and teenagers apparently driven to suicide' after being taunted online by cyberbullies who asked: 'Can u die please?', or 'Why are you still alive?', and 'You're ugly'. After months of torment she jumped to death in September 2013.<sup>4</sup> The perpetrators of this crime and their victims are not limited to children and teenagers, adults are involved as well. Section 24 of the Cybercrimes (Prohibition Prevention Etc) Act 2015 makes it a punishable crime for any person who bullies or harasses another using the internet or any other means of communication. But emphasis have not been laid on the silent participant whose presence plays a salient role in the whole context of the crime, that is the audience of the

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<sup>1</sup> Cyber bullying is the use of internet and other digital communication devices to practice this act; it is also known as online bullying or online harassment. It is the use of various electronic means of communication to harass others or send defamatory information about them to others.

<sup>2</sup> Kim Hua Tan, 'Introduction of Cyberbullying' (January 2019)

<[https://www.researchgate.net/publication/330654352\\_Introduction\\_of\\_Cyberbullying](https://www.researchgate.net/publication/330654352_Introduction_of_Cyberbullying)> accessed 20 May 2020.

<sup>3</sup> Emmanuel Okoiye and Anayochi Nwoga and Thompson Onah, 'Moderating Effect of Cyber Bullying on the Psychological Well-Being of In-School Adolescents in Benin Edo State Nigeria' [2015] (4) (1) *European Journal of Sustainable Development* 115.

<sup>4</sup> Philip Sherwell 'Teenager Who Killed Herself over Cyberbullying Sparks Soul Searching in US', *The Telegraph*, (16 October 2013) <<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/10383635/Teenager-who-killed-herself-over-cyberbullying-sparks-soul-searching-in-US.html>> accessed 13 February 2016, cited by Magdalena Hodalska,

'Cyberbullying, Fear and Silence: From Bystanders to Cyber-Samaritans' (May 2016) <

[https://www.researchgate.net/publication/305430441\\_Cyberbullying\\_Fear\\_and\\_Silence\\_From\\_Bystanders\\_to\\_Cyber-Samaritans](https://www.researchgate.net/publication/305430441_Cyberbullying_Fear_and_Silence_From_Bystanders_to_Cyber-Samaritans)> accessed 20 May 2020.

bully, who cheer the bully, laugh at his victim and in some instances take an active part by dropping offensive comments or sharing the derogatory post. Our criminal justice system does not impose any liability on any person who refuses to render help or rescue another who is in peril, the position is not different in some other common law jurisdictions. So far, cyberbullying cases in our courts is not more in number than the fingers on one hand, yet the crime is committed in thousands every day on the social media and cyberspace, thus the rate of prosecution is not commensurate with the rate of the crime and this does not give an air of justice in the system. Since cyberbullying has been criminalized in Nigeria, thus this study seeks to explore the possibility of imposing milled criminal sanctions under a bad-Samaritan-law, in other to urge the audience of the bully to report to the appropriate authority of the crime witnessed.

## 2. Nature of Cyberbullying

As a result of common technology usage, traditional bullying turns to cyber context and named as 'cyber bullying'. Cyberbullying is a reality of the digital age. Attempts have been made to capture the general idea with broad definitions. When the word was invented, it was defined as involving 'the use of information and communication technologies to support deliberate, repeated and hostile behaviour by an individual or group that is intended to harm others'.<sup>5</sup> Cyberbullying can be defined as an aggressive act or behaviour that is carried out using electronic means by a group or an individual repeatedly and over time against a victim who cannot easily defend him or herself.<sup>6</sup> It has also been simply defined as Internet harassment intentionally perpetrated online, insults and threats through electronic devices, and bullying perpetrated through electronic devices.<sup>7</sup> Meanwhile cyber harassment was further defined as the constant online expression that purposefully targets a particular person and causes the victim substantial emotional suffering and fear. He expands the definition to five key points, namely: repetition, use of digital technology, intent, targeting, and substantiality of harm.<sup>8</sup> The cyber bullying can take various forms which among others includes; trolling, cyber stalking etc.

Cyberspace is conducive to rampant bullying because it is a space often beyond adult supervision. Traditional bullying occurs most frequently in relatively unsupervised areas like the playground,<sup>9</sup> cyberspace is akin to a new Internet playground where adult vigilance does not intrude. The Internet and other forms of electronic communication also foster harmful social behaviour because such technology alters the nature of social interactions. There are several unique characteristics associated with cyberbullying that change the nature and consequences of bullying: anonymity and resultant disinhibition, infinite bystanders, and perpetual accessibility.<sup>10</sup> Due to its anonymous nature also, it is hard to detect this form of bullying and policing it is almost impossible. Cyberbullying victims are usually told to simply turn off the computer and ignore the bullies but this rarely works unless one shuts down all communication in social media. On the part of the perpetrator, the act of cyberbullying, due to its detached nature, pretty much encourages a lack of empathy towards the victim. In contrast to traditional bullying, the cyber bully would not be there in person as the victim is hurt or damaged by the cyberbullying, leaving less room for feeling sorry for the victim or acknowledgement that it could have gone too far. Additionally, the anonymous nature of cyberbullying also encourages the cyberbully to be brazen and ruthless in their acts as it can be tremendously difficult to identify the cyberbully, making it very easy for them to cyberbully someone time and time again while also not seeing any true consequence to their actions.<sup>11</sup>

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<sup>5</sup> Bill Belsey, 'Cyberbullying: A real and growing threat' [2007] (88) (1) *ATA Magazin* 15.

<sup>6</sup> P K Smith and J Mahdavi and Carvalho, 'Cyberbullying: Its Nature and Impact in Secondary School Pupils' [2008] (49) (4) *Journal of Child Psychology and Psychiatry* 376; Kim Hua Tan, 'Introduction of Cyberbullying' (January 2019) <https://www.researchgate.net/publication/330654352> accessed 19 June 2019; Hinduja, S., Patchin, J. (2016). Cyberbullying data 2016. In: <http://cyberbullying.org/summary-of-our-cyberbullying-research> accessed 2 June 2020.

<sup>7</sup>[2004] 'Online Aggressor/Targets, Aggressors, and Targets: A Comparison of Associated Youth Characteristics' [45] (7). 1308. Cited by Kim Hua Tan, 'Cyber Bullying: A cursory Review' (January 2019)

<[https://www.researchgate.net/publication/330654352\\_Introduction\\_of\\_Cyberbullying](https://www.researchgate.net/publication/330654352_Introduction_of_Cyberbullying)> accessed on 2 June 2020.

<sup>8</sup> *Ibid.*

<sup>9</sup> Rona S Atlas and Debra J Pepler, 'Observations of Bullying in the Classroom' [1998] (86) (87) *EDUC. RES.* Cited in Heather Benzmilller, 'the cyber-Samaritans: exploring criminal liability for the 'innocent' bystanders of cyberbullying' [2013] (107) (2) *Northwestern University Law Review* 933.

<sup>10</sup> What Is Cyber Bullying? Violence Prevention Works!

<[http://www.violencepreventionworks.org/public/cyber\\_bullying.page?menuheader=1](http://www.violencepreventionworks.org/public/cyber_bullying.page?menuheader=1)> accessed 2 June 2020.

<sup>11</sup> Kim Hua Tan, Introduction of Cyberbullying (n 7); Miriam Niklová, Jana Makúchová, 'Forms of Cyber-bullying from the Aspect of Cyber-victims' [2018] *the new educational review* 151.

### 3. Effects of Cyberbullying

Adolescence is a period of identity formation and a time they crave for social acceptance which when not attained mars the well-being of an adolescent. The social network media is a medium used by in-school adolescents to establish their identity and seek social recognition and peer acceptance via chatting or conferencing. However, if they experience cyberbullying, it impacts negatively on their psychological and emotional wellbeing.<sup>12</sup> It has been stated that victims of cyber bullying tend to have lower self-esteem than non-victims<sup>13</sup>. It has also been found that repeated acts of cyber bullying has been shown to threaten healthy development of self-esteem in youths and contribute to school failure and dropout and increase psychological symptoms such as depression and anxiety<sup>14</sup>. It was also added that cyber bullying jeopardizes the mental, emotional, and physical wellbeing of children and puts society at the risk of ethical and moral deterioration.<sup>15</sup> Unlike face-to-face bullying it does not end from the time the school is over but follows the child/adolescent back home with an easy access to the various forms of digital communication gadget. However, cyberbullying is recent because of the increase of mobile phones and internet usage within the adolescent population. Understanding self-esteem as another health and well-being psychological indicator, several studies have demonstrated that bullies, victims, and students not involved in bullying behaviours differ in their levels of self-esteem. Generally, victims exhibit statistically lower levels of self-esteem than others.<sup>16</sup>

### 4. Exploring the Criminal Liability of the Cyber Bystander

#### The Bad Samaritan/Duty to rescue Laws?

The biblical parable of the Good Samaritan tells the story of a traveller who took pity on the victim of a robbery and offered him medical care.<sup>17</sup> A bad Samaritan is one who by his inaction allows another to suffer a harm while he could have offered help. According to Joel Feinberg, he defined a bad Samaritan as:

- (1) A stranger standing in no 'special relationship' to an endangered party,
- (2) Who omits to do something — e.g. warn of unperceived peril, attempt a rescue, call the emergency services,
- (3) Which she could have done without unreasonable cost or risk to herself or others,
- (4) As a result of which the endangered party suffers harm or an increased degree of harm,
- (5) And who for these reasons is morally blameworthy.<sup>18</sup>

Based on the features of the bad Samaritan, he is someone who fails to perform what is termed an easy rescue. This label is because he is not required to interfere directly or personally causing him to go to unreasonable to put him/herself in peril. Thus, bad Samaritan Laws require bystanders to assist strangers in emergencies under certain conditions<sup>19</sup>. But this should be distinguished from the obligation owed where there is a special relationship.<sup>20</sup> An instance is the case of *Usman v United Kingdom*,<sup>21</sup> where the police ignored the persistent complaint of the plaintiff of the attacks on his family. The police never recorded any of the complaints nor investigated any of them until their assailant shot and killed Ali Usman the father of Ahmet Usman who was also injured during the attack, and the court held that the police owes not duty of rescue the plaintiff. Bad-Samaritan laws are warranted by the premium that we place on human life, on human beings. This premium is best reflected by our shared belief that no human being should be killed unless there is an extremely good, overriding reason.

<sup>12</sup> Okoiye O Emmanuel and Nwoga Anayochi and Onah A Thompson, 'Moderating Effect of Cyber Bullying on the Psychological Well-Being of In-School Adolescents in Benin Edo State Nigeria' [2015] (4) (1) *European Journal of Sustainable Development* 110.

<sup>13</sup> Beaty and Alexeyev 'The problem of school bullies: what the research tells us. *Adolescence*' 43(169):1-11. Cited by Okoiye O Emmanuel and Nwoga Anayochi and Onah A Thompson, 3.

<sup>14</sup> J Raskauskas and A D Stoltz, *Involvement in Traditional and Electronic Bullying among Adolescents* [2007] (43) *Developmental Psychology* 564.

<sup>15</sup> Mesch, *Parental Mediation, Online Activities, and Cyber bullying*' [2009] (12) (4) *Cyber Psychology & Behavior* 387.

<sup>16</sup> Steven Limo, 'Bullying Among Teenagers and Its Effects' (Bachelor's Thesis, Turku University of Applied Sciences 2015).

<sup>17</sup> Luke 10:27-37

<sup>18</sup> *Harm to Others: The Moral Limits of the Criminal Law* (Arizona: Oxford scholarship online 1987) 126.

<sup>19</sup> Ian S Blanco, 'Bad Samaritan Law' (September 1994) [www.academia.edu/30904996/Bad\\_Samaritan\\_Law](http://www.academia.edu/30904996/Bad_Samaritan_Law) accessed on 2 June 2020.

<sup>20</sup> Aleksander W Rudzinski, *The Duty to Rescue: A comparative Analysis* in James M Ratcliffe (ed) *The Good Samaritan and the Law* (Anchor Books, 1966) 95.

<sup>21</sup> [1998] EHRR 101.

### Arguments for Bad Samaritan/Duty to Rescue

Two arguments are usually put up by proponent of this law, and there are the social responsibility argument and the causation argument.<sup>22</sup> The common law view is justified by reference to the distinction between perfect and imperfect duties. A perfect duty is a duty which can be perfectly discharged and we can identify a correlative right which resides in some person to whom the duty is owed.<sup>23</sup> Negative duties, such as the duties not to kill or steal, will ordinarily fall into this category. Positive duties, on the other hand, are thought of as being imperfect in nature as there is often no certain means of discharging them.<sup>24</sup> Advocates of the social responsibility view of omissions liability argue that the duty to rescue is justified because certain requirements of social co-operation and social responsibility are needed in society for the realisation of personal autonomy.<sup>25</sup> Ashworth further noted the importance of the interrelationships between individual behaviour and certain communal goods.<sup>26</sup> The duty to rescue may be seen as a duty which each individual in society owes to every other because a right to be rescued in a situation where we are imperilled is one that we would expect to have as members of the political community. The right to be rescued is a communal good which reflects the value we as a society specifically place on human life.<sup>27</sup> The duty that we have to rescue others should be enforced by law because as members of the political community we do also have certain expectations of, and claims against, one another even outside of special relationships. One of these is that we be rescued in an easy rescue situation. What is at stake is the very life of the imperilled person itself and as Ashworth explains ‘the value of one citizen’s life is generally greater than the value of another citizen’s temporary freedom. In an easy rescue situation, the duty is fulfilled where the rescuer performs certain acts which are not unreasonable for her to undertake and do not put her in any danger. In an ‘easy rescue’ situation the duty to help others crystallises into one that can be perfectly executed, in the form of a one-off event in which we can identify a person who has a right to the performance of the duty, the imperilled party, and whose right to be rescued arises as a consequence of her legitimate expectations as a member of the political community. The causation argument considered that, given that duty to rescue laws are concerned wholly with the result of an omission; the alleged harmful conduct in question will never be a *sine qua non* cause of any harm. Nevertheless, it is true that this is only a starting point in the search for criminal liability and it is necessary to distinguish factual causation from legal causation. As Hart and Honore<sup>28</sup> explain, ‘We must distinguish between the mistaken claim that all that is meant by ‘cause’ (apart from the contribution of legal rules or policy) is a condition *sine qua non*, and the general principle that no event happens without a ‘cause’. For an offence such as assault to be made out in circumstances where the defendant’s conduct resembles an omission, the courts tend to construe the defendant as having actively committed the offence by means of creating a danger which he or she failed to rectify,<sup>29</sup> or by interpreting his or her behaviour as part of a continuous act.<sup>30</sup> *Prima facie* it might be thought desirable to acknowledge ‘but for’ causation as the true starting point for any inquiry into what caused an event to take place.<sup>31</sup> To say that a condition *non sine qua non* must always be present strongly conflicts with the notion that causation in different senses may be appropriate. Therefore the idea that a duty to rescue law is wrongful because it cannot be said that the defendant actively causes the harm in question is dependent upon a particular view of causation which fails to take into account the other ways in which we often think about causation.<sup>32</sup> Where a special relationship exists between a defendant and a victim, the omission of the defendant is lawfully held to have caused the victim’s harm because the victim was relying upon the defendant’s duty of care. However this does not mean to say that the defendant actively brought about the harm which was done to the victim.<sup>33</sup> Thus, if legal causation

<sup>22</sup> Jonathan Herring, *Criminal Law* (4th ed Oxford University Press, 2010) 115.

<sup>23</sup> Richard Trammel, ‘Saving Life and Taking Life’ in Bonnie Steinbock (ed), *Killing and Letting Die* (Prentice Hall 1980) 170.

<sup>24</sup> Joel Feinberg, *Harm to Others (The Moral Limits of the Criminal Law)*, (Oxford University Press, 1984) 134 vol 1.

<sup>25</sup> Andrew Ashworth, ‘The Scope of Criminal Liability for Omissions’ [1989] *LQR* 424, 432.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid* 424.

<sup>28</sup> *Causation in The Law* (2nd edn, Oxford University Press, 1989) 129.

<sup>29</sup> *R v Miller* [1983] 2 AC 161, 175. (HL)

<sup>30</sup> *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439

<sup>31</sup> Julian Conway, ‘Bad samaritan and the common law: the case of English duty to rescue’ [www.academia.edu/8104062/bad\\_samaritan\\_and\\_the\\_common\\_law\\_the\\_case\\_of\\_an1-English\\_duty\\_to\\_rescue](http://www.academia.edu/8104062/bad_samaritan_and_the_common_law_the_case_of_an1-English_duty_to_rescue) accessed 12 June 2020.

<sup>32</sup> *Ibid.*

<sup>33</sup> Robert Justin Lipkin, ‘Beyond Good Samaritans and Moral Monsters: An Individualistic Justification of the General Legal Duty to Rescue’ [1983] (31) *UCLA Law Review* 252, 269.

can be made out by the victim's expectations and reliance where she holds a special relationship to the defendant, then there is no logical reason why a victim in need of rescue should not be able to rely upon her expectation that a passing stranger is obligated to come to her aid.<sup>34</sup>

### 5. Cyberbullying in Nigeria

Cyberbullying escalated as ICT was welcomed into the Nigerian society. Nigeria embraced new technology in 1999, when the government at the time gave a go ahead for mobile telecommunications and this was accompanied by positive and negative consequences. The educational, business, industrial, and social aspects of the nation were affected<sup>35</sup> these crimes come in diverse forms ranging from fraudulent financial practices, cyber espionage, and cyber terrorism to cyber victimization/bullying. Certain agencies such as the National Information Technology Development Agency (NITDA), Nigerian Communications Commission (NCC), Economic and Financial Crimes Commission (EFCC) are also in the fight against these crimes and some initiatives include setting up a National Cybercrime Working Group (NCWG) in which stakeholders were drawn from the law enforcement agencies, the financial sector etc. Meanwhile, section 24 of Cybercrime (prohibition, prevention etc) Act, 2015 provides as follows:

Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that-

(a) is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent; or

(b) He knows to be false, for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent:

Commits an offence under this Act and shall be liable on conviction to a fine of not more than N7, 000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.

(2) Any person who knowingly or intentionally transmits or causes the transmission of any communication through a computer system or network-

(a) To bully, threaten or harass another person, where such communication places

Another person in fear of death, violence or bodily harm or to another person;

(b) containing any threat to kidnap any person or any threat to harm the person of another, any demand or request for a ransom for the release of any kidnapped person, to extort from any person, firm, association or corporation, any money or other things of value

(c) containing any threat to harm the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, to extort from any person, firm, association, or corporation, any money or other thing of value:

(i) in the case of paragraph (a) and (b) of this subsection to imprisonment for a term of 10 years and or a minimum fine of N25, 000, 000,00 and

(ii) In the case of paragraph (c) and (d) of this subsection, to imprisonment for a term of 5 years and/or a minimum fine of N15, 000,000.00.

From the foregoing provision, it shows that the crime is extensively covered by the section, and punishments as a consequence stipulated. According to paragraph (a) of the said section, it makes it an offence for anybody to produce any write up, image or video which may depict another in any sexually explicit manner or that an insulting him/her piece was sent any other offensive things, or to encourage another to produce such. The second paragraph also makes it a crime for one to send or encourage for it to be sent to another, any message, by text, image or video which has some content that is capable of annoying the recipient, make him lose his comfort, put him in danger of bodily harm or death, feel intimidated, breed hatred and make him anxious for no just cause, or propel a false rumour against him over something grave for instance that he looted money by virtue of an office he/she held. It is seen that the above legislation is all encompassing; it aptly captured the said crime and antecedent punishment. The major pitfall of this enactment is the issue of enforcement; how can this law be enforced? This question will necessitate the need to impose a criminal liability on a cyber-bystander who does nothing but observe or even unintentionally encourage cyber bullying.

<sup>34</sup> Julian Conway (n 24).

<sup>35</sup> Kingsley Chinaza Nwosu, 'Cyberbullying among undergraduate Students in a Nigerian University: Awareness and incidence' *Roman Journal of Psychological studies* [June 2018]

<<https://www.researchgate.net/publication/325745990>> accessed 12 June 2020.

### **The Bystanders Effect**

Bystanders are generally individuals who observe an act of violence or problematic behaviour, but who are not its direct perpetrators or victims<sup>36</sup>. Bystanders may not intervene for a range of reasons. The significant reason is the 'bystander effect' which describes the situation where individuals in crowds choose not to act, thereby reducing the likelihood that other witness will intervene<sup>37</sup>. This may be because the individual feels that someone else will intervene; that he or she has no responsibility to assist, especially where they do not personally know the victim; because in most crowded environment, people who perceive their identity to be anonymous are less likely to intervene; and the larger the number of bystanders to witness an event, the more their sense of responsibility is diffused<sup>38</sup>. In large crowds where no one is taking action to intervene, some individuals and even the victims themselves may believe that the bully's actions towards the victim is acceptable or condoned by the group. This inferred consensus by non-intervention makes bystanders at any point of incident if there is a sufficient gathering, more reluctant to act against apparent consensus.<sup>39</sup> Having observed the severity of this crime, particularly caused by the non-intervention of the bystanders, the question is; should there be imposition of duty to intervene on bystanders in cases of cyber bullying? Although, enacting any such legislation which places a legal duty on the bystanders to intervene would naturally attract controversy and conflicting views. Nevertheless, intervention could take the following forms; contacting the website manager or forum (for example, Facebook, Instagram, Snapchat, Whatsapp, School etc) or blocking mechanisms or installing software on the bully's system to determine his/her identity. Undoubtedly, the aforementioned acts of intervention could yield positive results, then there is no legal obligation on part of the bystander to even intervene. It therefore becomes imperative that a legal duty be imposed on the bystander to act in the face imminent bullying on the cyber space.

### **The Cyber Bystander's Duty to Report**

Traditional bullying does not happen in isolated places; thus cyberbullying is no exception. Actually, sometimes the aim of the bully is to entertain his audience. It is pertinent to understand the negative impact of non-intervention on the part bystanders; the audience of the bully, who are either cheering him, laughing and getting entertained, wishing that the fun continues and those who are actively getting involved by sending and sharing the defamatory and demeaning messages. The question whether these bystanders can be duty bound to intervene by means of reporting to the proper authority will be answered hereunder. The researcher will be considering the criminal liability of the bystanders in the light of the philosophy behind cyberbullying laws. This paper proposes a cyber-Samaritan's (Good Samaritan's) duty to report cyberbullying that includes:

- Cyberbullying which include threat to physical bodily harm, death or some other form of violence (whether psychological) of such criminal nature.
- The witness knows, or reasonably believes that the cyberbullying will cause a fear or actual violence whether physical or psychological.

The intervention of law enforcement in these situations is likely to be most beneficial to the victim by introducing the assistance of authorities before the victim suffers harm. However, it has been argued that Bad Samaritan laws violate a fundamental precept of criminal law and morality that 'people may be blamed and punished only for what they do, not for what they do not do'.<sup>40</sup> Notwithstanding, bystanders by their very presence 'act' in the sense of providing support and encouragement to the bully. In the cyberspace, the bully can see the support he is getting from his actions by the 'likes' he is receiving for a particular text or image he posted. When the bystander plays such a fundamental role, the difference between an act and an omission collapses. Any person who knows or envisages that the victim may attempt suicide has a duty to report to the authorities, this is because the law puts human life above all the disposal of the individual.<sup>41</sup> If a witness to cyberbullying knows or reasonably believes that the victim of cyberbullying might harm herself, he is obligated to report. The reasonable belief might arise

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<sup>36</sup> A Powell, 'Review of Bystander approaches in support of preventing violence against women', (2011) Victorian Health Promotion Foundation, p 8.

<sup>37</sup> M Calligerios, 'The Bystander Effect; would you intervene if a person was being attacked on public transport?' *The Age* Victoria, 27 May, 2015 [www.theage.com.au/victoria/the-bystander-effect-would-you-intervene-if-a-person-attacked-on-public-transport-20150527-ghas47.html](http://www.theage.com.au/victoria/the-bystander-effect-would-you-intervene-if-a-person-attacked-on-public-transport-20150527-ghas47.html) accessed 12 June 2020.

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> Ken Levy, *Killing, Letting Die, and the Case for Mildly Punishing Bad Samaritanism*, 44 GA. L. REV. 607, 658 (2010). Cited by Heather Benzmilller, *op cit* 952.

<sup>41</sup> Charles O Gregory, 'The Good Samaritan and the Bad: The Anglo-American Law' *the Good Samaritan and The Law* 23.

from a statement made by the victim or from personal knowledge about the victim's mental or emotional state and the likely effect of the cyberbullying. This duty does not impose liability on every person who sees malicious or hurtful comments directed at an individual who subsequently commits suicide.<sup>42</sup> The duty imposes liability only on those individuals who observe situations where a reasonable person would believe the victim might harm himself and fail to report to law enforcement. If the witness is a child, this reasonableness standard requires that the child act like a 'reasonable person of like age, intelligence, and experience under like circumstances.'<sup>43</sup> The duty imposed here will be the duty to report and not to rescue. To rescue is more meddling than that of reporting and it's also impractical in the cyberspace where the bystander can do little or nothing to rescue the victim. A witness in the cyberspace can attempt a rescue by flagging any inappropriate content.<sup>44</sup>

The cyber-Samaritan's duty to rescue or report whatever the case may be requires action only when there is no fear of harm against him or any other person, because he might fear that the bully may pick on him if he interferes. But there would not really be fear of the bully turning against him in the cyberspace unless the law enforcement agency does not maintain his/her anonymousness. In any case wherein the witness fears for his/her own safety or that of another, the obligation does not arise. Thus, a bystander can only be indicted when he witnessed the bullying and his digital presence recorded either in a personal sense wherein his activities were recorded in the site e.g. hitting a 'Like', making a comment, sharing or retweeting,<sup>45</sup> or in an impersonal sense wherein his/her presence is recorded in aggregate of the site.<sup>46</sup> Public digital presence is necessary for the duty to arise, because the presence of the bystander gives the bully an implicit support. It is also noteworthy that mere knowledge of the bullying does not impose a duty because he is not a bystander. Bystanders lend support to the bullying only when the bully knows that the bystander witnessed the bullying. The requirement of public digital presence record limits liability in the sense that one does not get to become guilty just because in the pile of things in a website, one happens to be offensive to some person. He would need to manifest his presence by 'liking', 'commenting' or 'viewing' the piece of bullying content for the duty to be triggered. Thus, his presence must be recorded in a specified piece rather than on the entire web page. This is to prevent innocent users of the internet from being prosecuted for what they know nothing about.

## 6. Conclusion

While many have opined, that the bystander should not be demanded to go out of his way to save another who is in peril which he was not the cause, they emphasised that the concept of individual autonomy should prevail over any moral opinion held by anybody. Others have argued on the other hand, that for the society to exist, the citizens must preserve each other to the best of their ability. Thus, I submit that the right to self-autonomy should not prevail over the need for cohesive society. The fact is that bullies exist because of bystanders. Traditional bullying makes it explicit more than cyber bullying, because in the former, the bully can count the number of the bystander and see the expression on their faces and know whether to continue or not. While in the later, he can only see or notice those who disclose their online presence by 'comments', 'likes' and 'shares'. Many of the bullies see it as a show, making effort to entertain their audience, not minding what harm they are doing to the victim. Some see it as a show of might, while another category uses it to catch fun, knowing that someone is afraid of them. The last category which is the most worrisome is those that do it out of pure mischief, the bullies in this category are quite few, but they do the most damage psychologically and physically. Since the bystander can be accused of being the catalyst of bullying, it is in the opinion of the researcher that he should be given the duty to stop it. This goes to support the popular saying that 'if you want to stop crime in any neighbourhood, give the bad boys living their charges to secure the place'. From the foregoing, it is seen that creating a duty to rescue/assist/report has done more good than evil, applying it in the case of cyberbullying will not make any different. Also keeping in mind that it is a crime in Nigeria, it even goes to give more grounds why the bystanders should not be celebrated for enjoying the show. If the duty to report this crime is imposed, the following will be achieved: We will create a society where peaceful coexistence will thrive. The bystander since he is readily available more than the law enforcement agents, he should be used to police the crime. The bully will desist knowing that he will be performing for some group of people ready to report him as soon as he starts.

<sup>42</sup>Heather Benzmilller, *op cit* 954.

<sup>43</sup> Restatement (Second) of Torts § 283A (1965). Cited by Heather Benzmilller, *op cit* 954.

<sup>44</sup> Some websites have this platform in order to regulate their content. Eg YouTube operates a system that allows a person to actually flag a video and indicate its category of impropriety, whether offensive, pornographic or violent etc. [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines) accessed on the 12 June 2020.

<sup>45</sup> Facebook Help Center: Like, FACEBOOK, <http://www.facebook.com/help/like> accessed on the 12 June 2020.

<sup>46</sup> YouTube publicly displays the number of views a particular piece of content receives. See YOUTUBE, <http://www.youtube.com/> accessed 12 June 2020.